Two criticisms may be passed upon the author's position, without denying his conclusion. First, he waives all discussion as to whether the restrictive agreement tends to suppress competition. The established test to be applied to such an agreement is that of "reasonableness;" the restraint must be no larger than is necessary for the fair protection of the parties and consistent with the interests of the public. *Nordenfelt* v. *Maxim, etc., Co.*, [1894] A. C. 535. From the standpoint of public interest, at least, it is clearly a material question whether or not the restraint will operate to suppress competition and foster monopoly. Secondly, the author apparently assumes that independent contracts necessarily involve no transfer of business. But where necessaries form the subject-matter of the agreement, it is plain that transfer of business to others must ultimately follow, though not necessarily to the covenantee alone. In other agreements as well, it may result as a natural consequence. If, then, the question of monopoly were waived, and a decisive reason for the author's position were, as he suggests, the transfer of business, it seems that at least some independent contracts would stand on the same footing with ancillary agreements; and the distinction urged would have but little weight.

But though the distinction can hardly rest on the ground suggested, it may be conceded that it is not without force. Public policy demands that a covenant ancillary to the conveyance of a business should, if reasonable, be enforced; otherwise the whole contract for the sale of a business and its good-will might prove worthless. The independent agreement, however, is supported by no such consideration; and frequently its obvious purpose is to suppress competition. This, it seems, is the basis of the distinction. The question of monopoly, far from being immaterial, is of clearest importance.

That the distinction suggested is not without recognition is apparent from a recent Alabama case. *Tuscaloosa Ice Mfg. Co.* v. *Williams*, 28 So. Rep. 669. To the same effect is a *dictum* in *More* v. *Bennett*, 140 Ill. 69. See also 2 BEACH, CONT., § 1575. In some instances, however, though rarely, the independent agreement has been sustained. *Leslie* v. *Lorillard*, 110 N. Y. 519.

RELIGIOUS BELIEF AS A DEFENCE FOR FAILURE TO PROVIDE MEDICAL ATTENDANCE. — The legal responsibility of one who substitutes in place of regular medical attendance a mode of treatment for illness prescribed by a religious body is a subject of growing importance. It is of interest therefore to find the criminal liability of parents for a failure under such circumstances to provide medical attendance for infants treated in a recent article by John H. S. Lee, 9 Am. Law. 565 (Dec. 1901). Certain preliminary questions are shown by the author to be well settled. It is established that religious belief is not a defence for failure to perform a legal duty, and that there is a legal duty at common law resting on a parent to furnish necessaries to his child. Proper treatment and care when the child is ill are clearly necessaries, and such treatment might often include medical attendance.

This series of propositions, however, merely leads up to the real difficulty of the subject. It is obvious that a parent is not always guilty of manslaughter for the death of a child resulting from failure from religious scruples to provide medical attendance. Mr. Lee makes criminal responsibility turn on the question "whether the defendant did in the particular instance act as a reasonably prudent man in like circumstances should have acted." This rule fails to recognize that the question is of the existence of the guilty mind, of wilful or grossly negligent omission to perform the duty, without which there can be no criminal liability at common law. The difficulty in these cases is that men who have done the best they knew cannot be held criminally liable. The plea of religious belief does not set up a defence for the violation of the duty, it negatives its very violation. The parent may make an ignorant and foolish mistake, but if he exercises his best judgment for the good of the child, he cannot be held guilty of culpable homicide. In such a case he would have no intention to avoid the performance of his duty, but would rather have a desire to perform it in the

wisest way. *Regina* v. *Wagstaffe*, 10 Cox C. C. 530. Theories, however, may be so absurd that they cannot be considered to be honest beliefs. It is hard to believe a man sincere in withholding food from an infant, or in confining the treatment of a severed artery to prayer. But that is an argument for the jury on the question of good faith. If it is desirable that the conscientious holders of perverted views should not be allowed to injure others by practising on them, the difficulty should be met by statutes. The Statute 31 & 32 Vict., c. 122, s. 37 imposed a positive duty on parents to provide medical attendance for their infant children, and under this statute religious conviction has been held no defence. *Regina* v. *Downes*, 13 Cox C. C. 111. Apart from such statutes the test is the good faith of the parent in attempting to fulfil the common law duty of care.

FEDERAL EQUITY PROCEDURE. — A Treatise on the Procedure in Suits in Equity in the Circuit Courts of the United States including Appeals and Appellate Procedure. By C. L. Bates. Chicago: T. H. Flood and Company. 1901. 2 vols. pp. lxii, 599; 810. 8vo.

This is an excellent work upon an important, technical, but practical subject. In most of our states, practice acts or codes have so modified the original system of equity procedure developed by the English chancellors that it has now become hardly recognizable. But in the United States courts, at the beginning of their history, the English chancery system was made the basis of equity procedure, and now through the later adoption of the English Chancery Orders of 1842 by these courts, this highly developed English system, only slightly modified, persists in our circuit courts perhaps even to a greater extent than in England itself. This procedure is, or should be, uniform throughout all our federal courts. A book, therefore, of the scope of the present one must prove of great value to all practitioners in federal equity, especially since this subject has before been hardly treated adequately.

The author deals with his theme both broadly and minutely. He outlines the basis of federal equity jurisdiction, and carefully traces the sources of the system of procedure. Then each step in the bringing and prosecution of a suit, including appeals, is taken up with great detail, and all the many questions that may arise during any stage of the proceedings are thoroughly investigated. At each step the English chancery procedure with its modifications in this country is indicated, and the authority for every rule laid down is brought back to the United States Statutes, the Equity Rules of the Supreme Court, or the English Chancery Orders of 1842. The result of this method is a thorough and reliable text-book which brings this great complex system of adjective law into a form readily accessible to a busy lawyer, thus considerably simplifying his labors within this field. Nor is the book without interest to the student, for it shows the survival of an interesting and highly developed form of pleading and practice in its practical modern development.

This book will of necessity be chiefly valuable for reference purposes and its value in this direction is greatly increased by an extensive appendix, containing the Constitution of the United States, annotated, the various Federal Judiciary Acts, the Equity Rules of the Supreme Court, the English Orders in Chancery of 1842, the rules of certain other federal courts, and a thorough selection of forms in equity. This brings together much important material which is not otherwise readily accessible, and, together with the complete series of indexes, makes the whole book a welcome addition to the list of working law books.

W. H. H.